

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)

DISH Network Corporation Files to Acquire) IB Docket No. 11-150
Control of Licenses and Authorizations Held)
By New DBSD Satellite Services G.P.,)
Debtor-in-Possession and TerreStar License)
Inc., Debtor-in-Possession)

**PETITION OF METROPCS COMMUNICATIONS, INC. TO REQUIRE FURTHER
PUBLIC INTEREST SHOWING OR, IN THE ABSENCE OF SUCH A SHOWING, TO
DENY THE DISH NETWORK CORPORATION APPLICATIONS**

Carl W. Northrop
Michael Lazarus
Andrew Morentz
Telecommunications Law Professionals PLLC
875 15th Street, NW, Suite 750
Washington, DC 20005
Telephone: (202) 789-3120
Facsimile: (202) 789-3112

Mark A. Stachiw
General Counsel, Secretary
& Vice Chairman
2250 Lakeside Boulevard
Richardson, TX 75082
Telephone: (214) 570-5800
Facsimile: (866) 685-9618

Its Attorneys

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MetroPCS Communications, Inc. (“MetroPCS”),¹ by its attorneys and pursuant to the September 15, 2011 *Public Notice* released by the Federal Communications Commission (“FCC” or “Commission”) in the above-captioned proceeding,² hereby respectfully requests that the Commission require DISH Network Corporation (“DISH”) to make a more detailed public interest showing with respect to its plans for the mobile satellite service (“MSS”) spectrum it would acquire through the acquisition of TerreStar License, Inc., Debtor-in-Possession (“TerreStar”) and New DBSD Satellite Service G.P., Debtor-in-Possession (“DBSD”) (“Proposed Transaction”). If DISH is unable or unwilling to make a more detailed public

¹ For purposes of these Comments, the term “MetroPCS” refers to MetroPCS Communications, Inc. and all of its FCC license-holding subsidiaries.

² “DISH Network Corporation Files to Acquire Control of Licenses and Authorizations Held by New DBSD Satellite Services G.P., Debtor-in-Possession and TerreStar License, Inc., Debtor-in-Possession,” *Public Notice*, IB Docket No. 11-150, DA 11-1557 (rel. Sept. 15, 2011) (“*Public Notice*”).

interest showing, the Commission should deny the Proposed Transaction. In support of this request, the following is respectfully shown:

I. INTRODUCTION AND SUMMARY

In the Proposed Transaction, DISH seeks approval to acquire control of the MSS licenses of two satellite systems – TerreStar 1 and DBSD G1. The relevant licensees, DBSD and TerreStar, are both debtors-in-possession in connection with bankruptcy proceedings.³ The licensees both hold licenses “for gateway earth stations, mobile earth terminals (‘METs’) and an ancillary terrestrial component (‘ATC’).”⁴ The MET and ATC licenses are for “operations in the 2 GHz band, and together authorize operations throughout the entire 40 MHz of spectrum available for mobile satellite service (‘MSS’) operations in the 2 GHz band (2000-2020 MHz uplink and 2180-2200 MHz downlink).”⁵ DISH filed its transfer of control application with respect to DBSD on April 8, 2011,⁶ and its transfer of control application with respect to TerreStar (along with its request to consolidate the DBSD and TerreStar transfer of control

³ *Public Notice* at 1.

⁴ *Id.*

⁵ *Id.*

⁶ See ICO Global Communications (Holdings) Limited; DBSD North America, Inc., Debtor-in-Possession; New DBSD Satellite Services G.P. Debtor-in-Possession, Transferors, and DISH Network Corporation, Transferee, Consolidated Application for Authority to Transfer Control, Narrative, IBFS File Nos. SAT-T/C-20110408-00071, SES-T/C-20110408-00424 and -00425 (filed Apr. 8, 2011) (“Initial DBSD Application”). Following is the full list of the DISH-DBSD applications that are the subject of this filing: SAT-T/C-20110408-00071, SAT-AMD-20110822-00164, SES-T/C-20110408-00424, SES-AMD-20110822-00990, SES-AMD-20110822-00989, SES-AMD-20110822-00988, SES-AMD-20110822-00987, SES-T/C-20110408-00425, SES-AMD-20110822-00986.

applications) on August 22, 2011⁷ (collectively the two transfer applications are referred to herein as the “Applications.”)⁸

In the Consolidated Application, DISH claims that a grant of the transfer of control will allow it to “launch a hybrid satellite and terrestrial mobile and fixed broadband network . . . using 40 MHz of the GHz MSS spectrum to provide American consumers with greater choice for mobile broadband services.”⁹ Then, throughout the Consolidated Application, DISH paints a picture with broad strokes about the resulting wireless network that will provide a competitive alternative to the emerging duopoly in the wireless industry – AT&T and Verizon. However DISH fails to provide the detail necessary for the Commission – or interested parties, such as MetroPCS – to fully understand how and when DISH plans to use this very valuable resource – 40 MHz of prime spectrum.

MetroPCS agrees whole-heartedly with DISH that more effective competition would be a good thing in the wireless industry, which is becoming increasingly consolidated.¹⁰

⁷ See TerreStar Networks Inc., Debtor-in-Possession and TerreStar License, Inc., Debtor-in-Possession, Transferors, and DISH Network Corporation and Gamma Acquisition L.L.C., Transferees, Consolidated Application for Transfer of Authorizations, IBFS File Nos. SAT-ASG-20110822-00165, SES-ASG-20110822-00992, -00993, -00994, and ITC-ASG-20110822-00279 (filed Aug. 22, 2011) (“Consolidated Application”).

⁸ In the Applications, DISH seeks several waivers, including a waiver of the integrated service requirements and the back up satellite requirement, and seeks to have the technical authority granted to DBSD to provide long-term evolution (“LTE”) extended to TerreStar. MetroPCS does not have any objection to extending these waivers to DISH, as they make it more likely that the MSS Spectrum can be put to productive use. MetroPCS’ concerns are limited to DISH’s failure to adequately show how DISH plans to use the spectrum with the benefit of the waivers.

⁹ Consolidated Application at 3.

¹⁰ Indeed, MetroPCS repeatedly has lamented the continued consolidation of the wireless industry and the resulting increases in the power of selected carriers over the rest of the industry. MetroPCS’ concerns are focused on ensuring that competition flourishes in the wireless industry, and MetroPCS repeatedly has urged the Commission to allocate more spectrum for wireless.

Unfortunately, the Applications provide little detail about DISH's plans. MetroPCS has grave concerns about allowing 40 MHz of scarce, valuable spectrum that is well suited to ameliorate the critical spectrum crunch in the United States to be transferred, yet again, without an adequate showing and a concrete plan that the spectrum in fact will be used. The Applications are unfortunately devoid of any specifics, and, as set forth in detail below, instead are rife with hedging language. Further, DISH fails to explain how it plans to obtain the necessary technical, operational and business expertise to construct and operate a terrestrial network, as well as how it plans to compete against the nationwide wireless carriers. Moreover, the Applications do not include a plan that demonstrates the precise use to which the 2 GHz MSS spectrum will be put.¹¹ While DISH acknowledges the potential and critical importance that the FCC has placed on the provision of a robust commercial broadband service in the 2 GHz MSS Band, DISH provides no basis for concluding that DISH actually will provide such competition.

The lack of specific details regarding DISH's business plans with respect to the 2 GHz MSS band forces MetroPCS to conclude that, in the absence of a more detailed showing, the public interest showing contained in the Applications falls woefully short of what would be necessary for the FCC to grant the Applications. In effect, DISH is proposing a greenfield start-up to provide nationwide broadband wireless service even though DISH has no wireless operating experience. Furthermore, DISH provides no commitments about the type of network

MetroPCS' concern is the particular MSS Spectrum covered by the Applications is finally put to use for the benefit of the industry.

¹¹ While business plans are not regularly required as part of assignment or transfer of control applications, MetroPCS submits that given the checkered history of this spectrum and the fact that it has lain fallow for a number of years, a more robust showing, which may include a business plan, would be appropriate.

that it is going to build, how DISH plans to build its network,¹² the services it proposes to offer, or how its going to provide service in the 2 GHz band. Instead, DISH makes a number of vague assertions about the types of services it might provide – without any detailed descriptions or making any actual commitments. Without such detailed showings, the 2 GHz band remains at risk of continuing to lie fallow while the rest of the wireless industry struggles amidst a serious spectrum crunch. Vast harm would result from another failed implementation for the 2 GHz band. Thus, MetroPCS submits that the FCC should deny DISH’s Applications unless DISH makes a more robust showing containing specific details about its proposed offerings for the band and a demonstrated showing that it is capable of implementing the plan, either on its own or through strategic partnerships with others. Only then could the FCC decide that granting this important 40 MHz of spectrum to DISH is in the public interest.

II. THE COMMISSION’S PROPOSALS REGARDING THE 2 GHZ MSS BAND ARE CRITICAL TO ITS PUBLIC INTEREST GOAL OF ALLOCATING ADDITIONAL SPECTRUM FOR MOBILE WIRELESS USE

The Commission’s “public interest evaluation necessarily encompasses the ‘broad aims of the Communications Act,’ which include, among other things, a deeply rooted preference for preserving and enhancing competition in relevant markets, accelerating private-sector deployment of advanced services, ensuring a diversity of information sources and services to the

¹² While DISH operates satellite services and provides satellite television services to millions of its subscribers, DISH does not have any terrestrial wireless experience. Obviously, DISH could commit to hire such talent or it could make a showing by partnering with another terrestrial wireless carrier. The fact that DISH provides no showing of how it plans to build or operate a network gives rise to the question of whether this spectrum will be put to beneficial use, which must be a matter of concern in light of how long the 2 GHz MSS spectrum has lain fallow. The Commission should require in this instance a more robust showing.

public, and generally managing spectrum in the public interest.”¹³ Given this exacting standard, notwithstanding the lofty assertions made by DISH in its Consolidated Application, without a more robust public interest showing regarding its plans, the Commission must be concerned that the proposed transaction actually may frustrate or impair the Commission’s implementation of the important public interest mandates of the Communications Act and interfere with the Act’s objectives. Indeed, the harm to the public interest – and to the achievement of the important goals in the National Broadband Plan¹⁴ – that would flow from allowing the 2 GHz MSS band to continue to lie fallow, is immeasurable.¹⁵

The demand for mobile wireless services is growing by leaps and bounds every day. Chairman Genachowski repeatedly has spoken of the crisis facing the United States, noting that “[t]his explosion in demand for spectrum is putting strain on the limited supply available for mobile broadband, leading to a spectrum crunch.”¹⁶ In order to meet this growing demand for wireless broadband services, the Commission, in the National Broadband Plan, found that 500 MHz of spectrum should be made available for mobile, fixed and unlicensed use over the next

¹³ *Applications of Comcast Corporation, General Electric Company and NBC Universal Inc; For Consent to Assign Licenses and Transfer Control of Licenses*, Memorandum Opinion and Order, 26 FCC Rcd 4238, 4248 ¶ 23 (2011) (citations omitted).

¹⁴ Connecting America: The National Broadband Plan (2010) (“NBP”).

¹⁵ The Commission must be mindful of two points. First, the NBP identified 2 GHz MSS as spectrum which could be used to reach the goal of 500 MHz of new spectrum available for commercial use. It can only fulfill these NBP goals if it is put to actual use. Second, there is precious little other spectrum that could be used for mobile broadband in the near term. Since this MSS spectrum does not require government relocation and is strategically located close to PCS and AWS spectrum, the Commission must make sure that it has a robust showing demonstrating that this spectrum will be used – and not warehoused or rendered useless by yet another failed business plan.

¹⁶ Julius Genachowski, Chairman, FCC, Remarks at Mobile Future Forum, Washington, D.C., at 5 (Mar. 16, 2011).

ten years.¹⁷ Further, the Commission found that, of this 500 MHz, “300 MHz between 225 MHz and 3.7 GHz should be made available for mobile flexible use within five years.”¹⁸ The Commission specifically identified a number of spectrum bands to fulfill its 300 MHz goal: 20 MHz of WCS spectrum 60 MHz of AWS 2/3 spectrum; 10 MHz of 700 MHz D Block spectrum; 120 MHz of broadcast television spectrum and 90 MHz of MSS spectrum (including the 40 MHz of 2 GHz band spectrum).¹⁹

Unfortunately, due to various matters both in and out of the Commission’s control, to date the Commission has fallen far short of meeting the worthy objectives of the NBP, particularly in the near term. For instance, despite the Commission’s efforts at increasing the flexible use of WCS spectrum, WCS licensees continue to argue that their spectrum as currently allocated remains largely unsuitable for mobile wireless services.²⁰ And, despite the fact that there have been long-standing rulemaking proceedings on both AWS-2 and AWS-3 spectrum, there has been no Commission action to move toward an auction of the fallow spectrum in either band.²¹ In addition, despite the near universal acknowledgement of the critical near-term need for commercial broadband spectrum, the 700 MHz D Block – which at present is designated by

¹⁷ NBP at Recommendation 5.8, p. 84.

¹⁸ *Id.*

¹⁹ NBP at 84, Exhibit 5-E.

²⁰ Acquisition of T-Mobile USA, Inc. by AT&T Inc: Description of Transaction, Public Interest Showing and Related Demonstrations, 49 n.48 (Apr. 21, 2011) (citing AT&T Petition for Partial Reconsideration, WT Docket No. 07-293 at 13-20 (filed Sept. 1, 2010)).

²¹ MetroPCS acknowledges that the Commission has issued a number of public notices with regard to the AWS-2 and AWS-3 spectrum, and that the Commission continues to work on potentially pairing the AWS-3 spectrum with government-occupied spectrum in the 1755-1780 MHz band – but that the prospect of such spectrum being auctioned in the near, or even medium, term is low. Further, given some of the technical challenges associated with AWS-2, this spectrum may end up not being as useful as PCS or AWS-1.

statute for commercial use – remains the subject of a contentious ongoing legislative tug-of-war in which public safety interests and certain carriers continue to advocate for a re-allocation of the 10 MHz of commercial spectrum for public safety uses.²² Furthermore, the L-Band satellite spectrum has become embroiled in a high profile interference battle between satellite and GPS users which has extended to the present day – with no end in sight.²³ And, lastly, there has been no measureable progress made on reallocation of any of the 120 MHz of broadcast spectrum, the very mention of which puts the broadcasting community up in arms.²⁴

At the same time, the wireless industry has continued to consolidate. In just the past four years, a number of wireless carriers have been acquired by the four largest carriers, and that trend continues.²⁵ Thus the Commission has limited near-term options to spur competition through

²² See, e.g., Donny Jackson, *D Block Legislation Future Unclear*, URGENT COMMUNICATIONS, Oct. 3, 2011, http://urgentcomm.com/policy_and_law/news/dblock-legislation-uncertain-20111003 (discussing that although public-safety officials have expressed support for the public safety reallocation of 10 MHz of 700 MHz spectrum, the bill has not yet been scheduled for a Senate vote).

²³ LightSquared, a holder of the vast majority of this spectrum, is currently involved in a highly publicized – and highly political – battle regarding reports that its proposed LTE network interferes with GPS receivers. See e.g., Colin Wood, *LightSquared and the GPS Industry Struggle to Coexist*, Government Technology, Sept. 28, 2011, <http://www.govtech.com/geospatial/LightSquared-and-the-GPS-Industry-Struggle-to-Coexist.html?page=1> (discussing the overall transition of the feud between GPS industry and LightSquared, stating that “[t]he GPS industry is up in arms. It wants the FCC to move LightSquared elsewhere on the frequency spectrum in the name of public safety. LightSquared contends that the problems can be solved without relocating its signal.”).

²⁴ See Press Release, National Association for Broadcasters, *FCC Broadband Plan Threatens Millions of TV Viewers* (July 25, 2011) <http://www.nab.org/documents/newsroom/pressRelease.asp?id=2579> (warning that a minimum of 210 full power TV stations could have to vacate their current TV channel assignment “to accommodate the FCC’s goal of reclaiming an additional 120 MHz of spectrum from broadcasters.”).

²⁵ Consolidation may have helped the few consolidating carriers gain more spectrum, but has failed to make spectrum available to small, mid-tier carriers and new entrants. This makes it

additional spectrum for mobile wireless uses, which brings us to the 40 MHz of 2 GHz MSS spectrum at issue in this proceeding. For all intents and purposes, this spectrum has remained essentially unused since its initial allocation for MSS service way back in 1986. Sadly, it has remained largely fallow, despite the Commission's repeated efforts to accord spectrum holders in the band additional flexibility and additional spectrum.²⁶ For instance, both TerreStar and DBSD received additional spectrum in the band *for free* when other application and license holders, such as GlobalStar, lost their spectrum. In addition, the Commission granted MSS operators a major concession by allowing them to provide terrestrial service using ATC rights if they met certain gating criteria. Both TerreStar and DBSD have such ATC rights, yet both providers struggled financially. TerreStar has offered only minimal service to the public since its inception. DBSD has offered no public service at all. The repeated failures of the licensees to provide beneficial public service in this band made this spectrum a prime candidate in NBP to be redirected to wireless broadband use.

Consequently, the 2 GHz MSS spectrum for which DBSD and TerreStar are licensed was identified in the NBP as part of the 300 MHz of spectrum that the Commission hoped to make available for commercial use by 2015.²⁷ Specifically, the S-Band was identified as part of the 90 MHz of MSS spectrum for which the NBP recommended that terrestrial deployment be

particularly important that the Commission ensure that this 40 MHz of MSS spectrum actually be used to inject needed competition into the wireless broadband industry.

²⁶ While both DBSD and TerreStar pursued business plans that, if successful, might have created additional competition, those business plans failed for a variety of reasons. While DISH's financials are much stronger than either DBSD or TerreStar ever were, there is still the risk that DISH's foray into wireless broadband may not be successful. The only way for the Commission to judge this is to require a detailed showing of exactly what DISH plans to do and how it plans to accomplish its goals.

²⁷ NBP at 87.

accelerated.²⁸ The NBP also recognized the possibility of adding a co-primary mobile terrestrial allocation to the S-Band, subject to certain conditions, such as construction benchmarks, participation in an incentive auction or other conditions designed to ensure timely utilization of the spectrum for broadband and appropriate consideration for the step-up in the value of the affected spectrum.²⁹

In spite of the limited use of the MSS spectrum in the past, the Commission initiated actions in an effort to implement the NBP's goals with respect to the 2 GHz spectrum and spur mobile broadband growth. First, the Commission released a *Notice of Proposed Rulemaking and Notice of Inquiry* ("MSS NPRM/NOI") that broadly considered options for MSS spectrum, particularly in the 2 GHz S-Band.³⁰ The *NPRM* portion discussed adding co-primary fixed and mobile allocations to the S-Band, while the broad *NOI* requested comment on further steps that the Commission could take to increase the value, utilization and investment in the S-Band without unjustly enriching the dilatory licensees. Some of the Commission's specific proposals included: (1) permit existing 2 GHz S-Band licenses, on a voluntary basis, to relinquish bandwidth in exchange for a portion of the proceeds from an auction for the new licenses authorizing terrestrial only service (also known as a voluntary incentive auction); and (2) permit existing 2 GHz S-Band licensees the option to return some of their spectrum (which could then be auctioned to new terrestrial-only licensees) in exchange for the ability to operate purely terrestrial networks using their remaining spectrum. The Commission has since released an

²⁸ *Id.*

²⁹ *Id.* at 88.

³⁰ *Fixed and Mobile Services in the Mobile Services Bands at 1525-1559 MHz and 1626.5-1660.5 MHz, 1610-1626.5 MHz and 2483.5-2500 MHz and 2000-2020 and 2180-220 MHz*, Notice of Proposed Rulemaking and Notice of Inquiry, 25 FCC Rcd 9481 (2010) ("MSS NPRM/NOI").

Order adding co-primary fixed and mobile allocations to the 2 GHz band, which will “lay the framework for more flexible use of the band, including for terrestrial broadband services, in the future.”³¹

The Commission also recently released a *Public Notice* seeking comment on different configurations for the 2 GHz MSS Band, and “to encourage the growth of terrestrial mobile broadband services in the 2 GHz spectrum range that is allocated for fixed and mobile use.”³² In this *Public Notice*, the Commission sought comment on three potential 2 GHz spectrum configurations – some of which included portions of the AWS-2 and AWS-3 blocks. In addition, the Commission sought comment on whether incentive auctions would “be an appropriate mechanism for providing an option for incumbent 2 GHz MSS licensees to vacate the band in favor of mobile broadband providers operating on new licenses.”³³ The Commission also sought comment on “whether existing licensees should be afforded the option of returning some portion of their spectrum license to the Commission for subsequent auction as part of a terrestrial 2 GHz band, in exchange for receiving Part 27 terrestrial rights in the remaining 2 GHz MSS Spectrum.”³⁴ The merits of the DISH Applications must be weighed against these specific public interest alternatives.

³¹ *Fixed and Mobile Services in the Mobile Services Bands at 1525-1559 MHz and 1626.5-1660.5 MHz, 1610-1626.5 MHz and 2483.5-2500 MHz and 2000-2020 and 2180-220 MHz*, Report and Order, 26 FCC Rcd 5710 (rel. Apr. 6, 2011) at para. 2.

³² See “Spectrum Take Force Invites Technical Input on Approaches to Maximize Broadband Use of Fixed/Mobile Spectrum Allocations in the 2 GHz Range,” Public Notice (rel. May 20, 2011).

³³ *Id.* at 3.

³⁴ *Id.* at 3-4.

Thus, the Commission has been actively considering and implementing ways for the 2 GHz MSS band to be used to provide mobile wireless broadband services to the public – without according a windfall to the existing licensees. The Commission has said that doing so would be in the public interest. In fact, it is critically important that mobile wireless services be provided over this band, as the 40 MHz of 2 GHz MSS spectrum is one of the only viable near-term options remaining of the 300 MHz of spectrum identified in the NBP as being necessary to satisfy mobile wireless demand over the next five years. Without a robust showing of how this 40 MHz block of spectrum will be utilized to provide competitive mobile wireless services in an identifiable time frame, it would be contrary to the public interest to grant this spectrum to another entity based upon unsubstantiated vague statements and promises.

III. WITHOUT FURTHER DETAILS, AN FCC GRANT OF DISH'S CONSOLIDATED APPLICATION WOULD NOT BE IN THE PUBLIC INTEREST

In reviewing transfer of control applications, the Commission must weigh any public interest harms of the proposed transaction against the potential public interest benefits and determine whether the applicants have shown by a preponderance of the evidence that the proposed transaction, on balance, serves the public interest.³⁵ In this case, DISH's Consolidated Application, as currently written, does not provide significant enough details to allow interested parties to comment on, or the Commission to determine, whether a grant would serve the public interest. While DISH acknowledges the underutilized nature of the 2 GHz MSS band and the

³⁵ See *Application of EchoStar Communications Corporation, (a Nevada Corporation), General Motors Corporation, and Hughes Electronics Corporation (Delaware Corporations) (Transferors) and EchoStar Communications Corporation (a Delaware Corporation) (Transferee)*, Hearing Designation Order, 17 FCC Rcd 20559, 20630 – 20631, ¶¶ 188 – 192 (2002) (“*EchoStar-DirecTV HDO*”).

importance of broadband wireless competition, it does not provide any concrete showings that a grant of its Applications would remedy the situation or even how DISH in fact plans to utilize the spectrum.

There are several criteria that the Commission applies in deciding whether a claimed benefit should be considered in the public interest analysis. If the identified benefit is merely speculative or vague, it will be dismissed or discounted during the analysis.³⁶ It is well settled that applicants are unable to fulfill their burden if they offer only vague or speculative efficiency claims, and are unable to reasonably verify these claims.³⁷ A benefit is considered to be “speculative” if it is vague or is merely a prediction that is expected to occur only in the indefinite future, and therefore, can not be verified by the applicant.³⁸ Significantly, the Commission utilizes a sliding scale approach, requiring applicants to “demonstrate that claimed benefits are more likely and more substantial, the greater the likelihood and magnitude of potential harms.”³⁹ In the situation at hand – where the important objectives of the NBP are at stake, and harm will come to the public if the spectrum is not put to use – this established analytical approach requires concrete evidence. Vague assertions – such as those contained within the Consolidated Application – cannot suffice.

³⁶ *Id.* (stating that the criteria are that claimed benefits: (1) must be merger specific; (2) must be verifiable; and (3) can mitigate anticompetitive effects of the merger). *See also Application of Whitehall Enterprises, Inc. Assignor and Clear Channel Broadcasting Licenses, Inc. Assignee; For Consent to Assignment of License of WAAM(AM), Ann Arbor, MI*, Hearing Designation Order, 17 FCC Rcd 17509, 17522 ¶ 36 (2002).

³⁷ *Applications of PacifiCorp Holdings, Inc. Transferor, and Century Telephone Enterprises, Inc. Transferee, For Consent to Transfer Control of Pacific Telecom, Inc. a Subsidiary of PacifiCorp Holdings, Inc.*, Memorandum Opinion and Order, 13 FCC Rcd 8891, 8912 ¶ 38 (1997).

³⁸ *EchoStar-DirecTV HDO* at ¶ 190.

³⁹ *Id.* at ¶ 192.

In the Applications, DISH provides no details about its proposed wireless services or network, sets forth no plan for demonstrating either how such a wireless network would be implemented and/or could succeed in the near term, and fails to discuss where DISH will derive the necessary technical, operational or business expertise to construct and operate a wireless network over the 2 GHz MSS spectrum. Rather, DISH makes a number of vague assertions about the network that it *may* consider building in the 2 GHz MSS band. These indefinite public interest benefits can be given no serious weight by the Commission. After years of hollow promises and vague commitments by satellite licensees, the Commission must ask for firm commitments on spectrum that it has deemed critical to the provision of mobile wireless service.

While DISH makes a number of generalized references to the network that it is considering implementing on the 40 MHz of 2 GHz MSS spectrum, it makes no actual commitments. Indeed, every single one of DISH's statements with regard to its proposed network is vague, ambiguous and gives little hint as to what will actually be done with the spectrum. For example:

- “DISH . . . could offer at least a partial competitive substitute for services offered by Commercial Radio Service carriers on a nationwide basis.”⁴⁰
- The Applicants “expect that the proposed transaction taken together with DISH's proposed transaction of DBSD, will result in the provision of next-generation broadband services. . . .”⁴¹
- DISH “plans to deploy an MSS/ATC system using the full 40 MHz of S-band spectrum with in-orbit active and spare capacity on TerreStar's T-1 and DBSD's G-1 satellites, subject to grant of TerreStar's and DBSD's modification applications and waiver requests.”⁴²

⁴⁰ Consolidated Application at 3 (emphasis added).

⁴¹ *Id.* at 23 (emphasis added).

⁴² *Id.* at 25 (emphasis added).

- DISH’s offerings “could consist of mobile, portable, or fixed broadband services individually or a combination thereof.”⁴³
- It further “expects that the consumer equipment will include broadband-capable tablet computers, among other devices.”⁴⁴
- DISH further states that it “anticipates offering broadband services both on a stand-alone basis and in a consumer-friendly bundle with its multichannel video services.”⁴⁵
- Lastly, DISH “plans to deploy its network based on the LTE Advanced Standard from the outset for its next generation MSS/ATC operations.”⁴⁶

Each of the above statements demonstrates that DISH is not actually committing to providing a wireless service that would finally put the vastly underutilized 2 GHz MSS band to use in the public interest in an identifiable time frame. Rather, these statements are best viewed as being speculative claims that do not bring the FCC any closer to fulfilling its goal of easing the nation’s spectrum crunch. DISH’s vague statements about the services it may provide are not enough to meet the Commission’s public interest standard, particularly in light the Commission’s recent actions regarding the 2 GHz MSS band, the NBP, and the *MSS NPRM/NOI*.

DISH also claims that it has “adequate financial, technical, and operational resources and demonstrated ability to deliver on the broadband potential of these spectrum bands.”⁴⁷ However, DISH has not presented any specific financial showing or hard evidence to the Commission detailing how it will actually accomplish this goal. The Department of Justice recently has

⁴³ *Id.* at 26 (emphasis added).

⁴⁴ *Id.* at 25-26 (emphasis added).

⁴⁵ *Id.* at 26 (emphasis added).

⁴⁶ *Id.* at 28 (emphasis added).

⁴⁷ *Id.* at 33.

discussed the difficulty of creating a nationwide wireless competitor from scratch.⁴⁸ Notably, DISH does not detail how it plans to finance the vast costs involved with building and operating a wireless network or how it would go about actually building the proposed network. Indeed, the cost of acquiring the spectrum will pale in comparison to building and operating a nationwide network. Nor does it demonstrate how it will be financially able to live up to its claims.

This must be a matter of particular concern since DISH currently only operates satellites, and does not have any experience in building and operating terrestrial networks. Success in the satellite broadcasting industry does not necessarily translate into the support and experience necessary to construct and operate a nationwide mobile wireless network. While there may be many ways DISH could obtain that expertise, the Applications are devoid of any such showings. Although DISH may be a substantial company, the manner in which the development at the 2 GHz spectrum can be undertaken is unclear. The Commission must assure itself that the spectrum at issue will in fact be put to beneficial use.

It is for these reasons that the Commission must require DISH to provide support for each of its claims. Without such a showing, the Commission cannot be assured that it is not giving away 40 MHz of valuable spectrum to an entity that will be unwilling or unable to provide services in the near term that the Commission has already found would be in the public interest for the band. Such support should include a showing detailing how DISH plans to acquire the necessary technical and operational expertise it needs to construct and operate a terrestrial network, and details on how DISH plans to finance and construct its network. The Commission also should require DISH to supplement its existing showing with additional specific details on

⁴⁸ Second Amended Complaint at ¶ 45, *The United States of America, et al. v. AT&T Inc., et al.*, No. 11-01560 (D.C. Cir. filed Sept. 30, 2011).

its plans for a mobile wireless network to assure that the various vague assertions made by DISH in its Consolidated Application can be met. In short, the Commission should not eliminate yet another potential avenue to ease the nation’s spectrum crunch without a detailed showing that describes DISH’s proposal to provide mobile wireless services over this 40 MHz block of valuable spectrum.

Lastly, the Commission should recognize that the spectrum at issue in this proceeding was never auctioned to the public, and was granted to entities at a time when the Commission solicited specific showings from parties wanting to operate over spectrum. As the Commission recognized in the order granting the 2 GHz MSS spectrum licenses, “[h]istorically, the Commission has fashioned financial requirements for satellite services on the basis of entry opportunities in the particular service being licensed.”⁴⁹ However, with respect to the 2 GHz MSS band, the Commission departed from past precedent and decided “not to impose financial qualification requirements for . . . 2 GHz MSS.”⁵⁰ Instead, the Commission decided to rely on “milestone requirements [to] ensure timely construction of systems and deployment of service”⁵¹ – a reliance that has failed given that not a single entrant has ever provided widespread commercial service throughout the long history of the band. In light of the decade-long string of missed milestones, bankruptcies, spectrum forfeitures and reassignments, and a continued lack of meaningful service in the band, the Commission should not make the same mistake again here. Instead, the Commission should require DISH to provide details, and specific, concrete

⁴⁹ *Establishment of Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band*, Report and Order, 15 FCC Rcd 16127, ¶ 46 (2000) (citing 47 C.F.R. §§ 25.140(c), 25.142(a)(4)).

⁵⁰ *Id.* at ¶ 48.

⁵¹ *Id.*

assurances, on its proposal on how it will fund, construct, operate, build, and maintain a wireless network in the 2 GHz MSS band in the identifiable future.

IV. CONCLUSION

As noted above, MetroPCS hereby respectfully petitions the Commission to require DISH to supplement its public interest showing to detail the specific plans of DISH Network Corporation for the spectrum it proposes to acquire in its proposed acquisitions of TerreStar and DBSD. If DISH is unable to make an adequate public interest showing, the Commission should deny its Applications.

Respectfully submitted,

MetroPCS Communications, Inc.

A handwritten signature in black ink, appearing to read 'Mark A. Stachiw', with a long horizontal flourish extending to the right.

By:

Carl W. Northrop

Michael Lazarus

Andrew Morentz

TELECOMMUNICATIONS LAW

PROFESSIONALS PLLC

875 15th Street, NW, Suite 750

Washington, DC 20005

Telephone: (202) 789-3120

Facsimile: (202) 789-3112

Mark A. Stachiw

General Counsel, Secretary

& Vice Chairman

MetroPCS Communications, Inc.

2250 Lakeside Blvd.

Richardson, Texas 75082

Telephone: (214) 570-5800

Facsimile: (866) 685-9618

Its Attorneys

October 17, 2011

CERTIFICATE OF SERVICE

I, Michael Lazarus, hereby certify that on this 17th day of October 2011, I have caused a true and correct copy of the foregoing **PETITION OF METROPCS COMMUNICATIONS, INC. TO REQUIRE FURTHER PUBLIC INTEREST SHOWING OR, IN THE ABSENCE OF SUCH A SHOWING, TO DENY THE DISH NETWORK CORPORATION APPLICATIONS** to be served upon the parties listed below at the following physical or electronic mail addresses:

R. Stanton Dodge DISH Network Corporation 9601 South Meridian Boulevard Englewood, CO 80112	Pantelis Michalopoulos Steptoe & Johnson, LLP 1333 Connecticut Avenue, NW Washington, DC 20036 <i>Counsel for DISH Network Corporation</i>
Douglas Brandon TerreStar License Inc., Debtor-in-Possession 12010 Sunset Hills Road Reston, VA 20190	Tom W. Davidson Akin Gump Strauss Hauer and Feld LLP 1333 New Hampshire Avenue, NW Washington, DC 20036 <i>Counsel for TerreStar License Inc., Debtor-in-Possession</i>
Peter A. Corea DBSD North America, Inc. Debtor-in-Possession and New DBSD Satellite Services G.P. Debtor-in-Possession 11700 Plaza America Drive, Suite 1010 Reston, VA 20190	Cheryl A. Tritt Phuong N. Pham Wilkinson Barker Knauer, LLP 2300 N St. NW, Suite 700 Washington, DC 20037 <i>Counsel for DBSD North America, Inc. Debtor-in-Possession and New DBSD Satellite Services G.P. Debtor-in-Possession</i>
Jeffrey H. Blum Alison A. Minea DISH Network Corporation 1110 Vermont Avenue, NW, Suite 750 Washington, DC 20005	Timothy M. Dozois ICO Global Communications (Holdings) Limited 2300 Carillon Point Kirkland, Washington 98033
Lynne Montgomery Satellite Division, International Bureau Federal Communications Commission Email: Lynne.Montgomery@fcc.gov	Marilyn Simon Satellite Division, International Bureau Federal Communications Commission Email: Marilyn.Simon@fcc.gov

Jim Bird Office of General Counsel Federal Communications Commission Email: Jim.Bird@fcc.gov	Neil Dellar Transaction Team, Office of General Counsel Federal Communications Commission Email: Neil.Dellar@fcc.gov
David Krech Policy Division, International Bureau Federal Communications Commission Email: David.Krech@fcc.gov	Best Copy and Printing, Inc. FCC Duplicating Contractor Email: fcc@bcpiweb.com



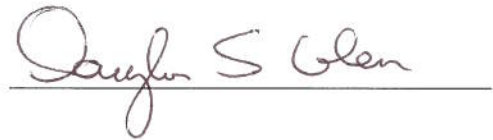
Michael Lazarus
Telecommunications Law Professionals PLLC

VERIFICATION

I, Doug Glen, declare that I am the Senior Vice President, Corporate Development, for MetroPCS Communications, Inc., and that the facts set forth in the Petition of MetroPCS Communications, Inc. to Require Further Public Interest Showing or, In the Absence of Such a Showing, to Deny the DISH Network Corporation Applications, are true and correct to the best of my knowledge, information and belief.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 17, 2011

A handwritten signature in dark ink, reading "Douglas S. Glen", is written over a horizontal line.